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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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DEC 14 1994

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Eligibility for the Specialized)
Mobile Radio Services)
and Radio Services in the)
220-222 MHz Land Mobile Band)
and Use of Radio Dispatch)
Communications)

GN Docket No. 94-90

DOCKET FILE COPY ORIGINAL

To: The Commission

SUPPLEMENTAL COMMENTS OF E.F. JOHNSON COMPANY

E.F. Johnson Company ("E.F. Johnson" or the "Company"), by its attorneys, hereby submits Supplemental Comments in response to the Notice of Proposed Rule Making ("Notice") adopted in the above-referenced proceeding¹ in which the Federal Communications Commission ("FCC" or "Commission") considers whether (1) to amend its rules governing licensee eligibility in the Specialized Mobile Radio ("SMR") service and in the commercial 220-222 MHz land mobile services; and (2) to permit common carriers to offer dispatch services on common carrier channels.²

¹ Notice of Proposed Rule Making, GN Docket No. 94-90, FCC 94-202 (released August 11, 1994).

² E.F. Johnson hereby respectfully requests leave to file Supplemental Comments in this proceeding. The Supplemental Comments are based on a recent civil action brought by the Department of Justice in which matters relevant to this proceeding were addressed. By these Supplemental Comments, E.F. Johnson wishes to place into the record the findings of the Department of Justice; these findings were not available at the time Comments were due. The Supplemental Comments do not prejudice any party as they involve matters of public record and have relevance to the instant proceeding.

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In this Notice the Commission proposed to eliminate the current prohibition against common carriers offering dispatch services. The Commission sought comments on whether permitting all mobile service common carriers to provide dispatch service will improve available services and lower consumer costs by increasing competition. E.F. Johnson submitted Comments to the FCC on October 5, 1994 because allowing common carriers to enter the dispatch market may have a significant impact on many SMR licensees. E.F. Johnson is a major manufacturer and distributor of products to this segment of the telecommunications industry. Thus, any new rules adopted as a result of the Notice will affect the Company's ability to sell its products, as well as consumers' ability to obtain low cost dispatch service.

The deadline for submitting Comments in this proceeding was October 5, 1994. On October 27, 1994, the Department of Justice ("DOJ") filed a Complaint in the United States District Court for the District of Columbia (the "Court") to block Nextel Communications, Inc.'s ("Nextel") acquisition of Motorola, Inc.'s ("Motorola") SMR assets.³ The DOJ alleged, among other things, that dispatch services are a distinct and separate market from the provision of interconnected mobile communications services. This finding is relevant to the above-captioned proceeding. Accordingly, E.F. Johnson respectfully submits the following Supplemental Comments in response to the Notice.

In its earlier Comments, E.F. Johnson argued that allowing common carriers to offer dispatch services would have a significant anti-competitive impact on the dispatch market. In its civil action, the DOJ submitted a Competitive Impact Statement in which in which it characterized the dispatch market as a distinct product market from the cellular telephone service

³ U.S. V. Motorola, Inc. & Nextel Communications, Inc.; Proposed Final Judgment and Competitive Impact Statement, 59 FR 55705 (1994).

market.⁴ The DOJ specifically stated that cellular telephone service is not a substitute for dispatch services.⁵

The Commission reasons that lifting the dispatch prohibition would increase the number of service providers and the amount of competition, ultimately resulting in lower cost services. However, this presumption is only valid if the competitors are seeking customers in the same market. Because cellular providers are primarily in the mobile telephone market, the FCC provided them with significantly greater spectrum capacity than small SMR systems. Because the FCC intended SMR providers to serve a different, and as the DOJ has confirmed, distinct market, they were provided with fewer spectrum resources. If cellular providers are allowed to provide dispatch services, small SMR licensees, with these more limited resources will not be able to compete and will eventually be driven from the market. Cellular providers will then be free to utilize the spectrum allotted for dispatch services to provide greater revenue-producing cellular services. Dispatch customers will then have fewer choices for dispatch service. The DOJ's conclusion that cellular and dispatch services are distinct product markets supports the theory that allowing cellular providers into the dispatch market may ultimately result in the demise of the dispatch market entirely.

⁴ Id. at 55709.

⁵ Id.

WHEREFORE, THE PREMISES CONSIDERED, E.F. Johnson Company hereby submits the foregoing Supplemental Comments and urges the Commission to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

E.F. JOHNSON COMPANY

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